

REMARKS

Claims 1-4, 6-18, 20-33 and 35-43 are currently pending in the subject application and are presently under consideration. Claims 1, 11, 20, 29, 35, and 40 have been amended as shown on pages 2-7 of the Reply. Claims 4, 6, 8-10 and 17 have been cancelled.

Applicant's representative thanks Examiner Augustin for the courtesies extended during the telephonic interview conducted on April 4, 2008. During the interview, applicant's representative discussed the amended claim features and their distinctions from cited references Christiano and Rivera, *et al.* The Examiner indicated that the functionality of the oversight component did not appear to be anticipated by either cited reference, and offered helpful recommendations for improving the potential allowability of this feature. The Examiner also suggested that combining the newly amended features of independent claim 40 into independent claim 1, together with the oversight component, would result in a stronger claim. The Examiner's recommendations are reflected in the claim set herein.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-4, 6-18, 20-33 and 35-43 Under 35 U.S.C. §103(a)

Claims 1-4, 6-18, 20-33 and 35-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Christiano (US 5,671,412), in view of Rivera, *et al.* (US 6,056,786). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Christiano and Rivera, *et al.*, individually or in combination, do not teach or suggest each and every feature set forth in the subject claims.

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "'guard against slipping into the use of hindsight'" (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

The subject claims relate to a license enforcement system that stores digital licenses associated with computer applications in a secure license store. A monitoring component can monitor the stored licenses for user violations of the license agreements; for example, detecting when the number of current license users exceeds the agreed maximum number of users. An enforcement policy can be implemented that initiates corrective action when a violation is detected. Such corrective action can include, but is not limited to, transmitting warning messages to users or system administrators, or disabling the application whose license is being violated. To ensure that the licenses are being monitored at all times, an oversight component can observe the monitoring component to ensure its correct function. When it is determined that the monitoring component has stopped functioning, the oversight component can attempt to restart the monitoring. If the attempt to restart the monitoring component fails, the oversight component can disable the associated application to prevent license violations (see paragraph [0051] of the specification). In particular, amended independent claim 1 recites, *an oversight component that observes the monitoring component to ensure that it is operating, wherein the oversight component restarts the monitoring component when it stops operating, and shuts down the application if monitoring component cannot be restarted.*

Christiano does not teach or suggest these aspects of the subject claims. Christiano relates to a license management system that allows client computers to check out application licenses from a license server. The system monitors for violations of license policies, and takes corrective actions when a violation is detected according to a pre-determined level of enforcement. However, Christiano does not disclose an additional oversight component that ensures correct monitoring of license policies, that additionally attempts to restart monitoring when it is determined that monitoring has stopped, and that shuts down the applications associated with the license when the failed monitoring cannot be restarted. Such features can provide an additional level of protection against improper software use not contemplated by Christiano.

Rivera, *et al.* is also silent regarding such an oversight component. Rivera, *et al.* relates to a user monitoring system that determines the number of concurrent users transacting with a licensed server program over a given time period. The reported results can be used to determine compliance or non-compliance with the license agreement associated with the program.

However, the cited reference does not teach or suggest an oversight component with the aforementioned protection features.

In addition to the features discussed above, the subject claims disclose that copies of license data can be stored in a backup store. If license data in the license store is determined to be corrupt, the corrupt license data can be deleted from the license store, and the backup license data can be checked for validity. If the license data in the backup store is validated, the license can be restored to the license store based on the backup copy. Alternatively, if the backup copy cannot be validated, an error message can be displayed, and a shutdown of the licensing system can be initiated (see paragraphs [0050] and [0082] and Figure 25 of the specification). To this end, amended independent claim 1 further recites, *a backup store that contains copies of the stored license data, the validation component checks the validity of the copies of the license data in the backup store upon determining that stored license data in the license store is corrupt, restores the corrupt license data from the backup store to the license store upon confirming the validity of the copies, and initiates shutdown of the license enforcement system upon determining that the copies in the backup store are invalid.*

Christiano does not disclose such a backup and restore method. Christiano teaches that, if a license file or server for a designated product cannot be found on a network, the system initiates a diagnostic procedure wherein file servers on the network are polled sequentially. For each server polled, a determination is made as to whether the server is the correct file server for the designated product. The Examiner references this diagnostic procedure, and contends that it reads on the backup and restore features now disclosed in amended independent claim 1. However, contrary to the Examiner's interpretation on page 4 of the Office Action, the diagnostic procedure outlined in Christiano does not seek to locate and deliver a *backup* copy of the unavailable license file. Rather, it is a methodical procedure for locating the *original* license file or server on the network (see column 26, lines 12-14, 28-30, 35-36, and 42-23, where it is made clear that the procedure seeks to locate "the correct license server for the designated product"). No mention is made of backup copies of license data, or restoring licenses from such backup data. Nor does Christiano teach or suggest performing a validation on backup license data, or initiating a system shutdown when such a validation fails. Moreover, the compliance monitoring system of Rivera, *et al.* also fails to disclose such a license backup and restore feature.

Moreover, amended independent claim 11 recites, *an oversight component that observes the operation of the monitoring component and restarts the component when it fails to operate properly, the oversight component shuts down the licensed application when the monitoring component cannot be restarted.* As discussed *supra*, neither Christiano nor Rivera, *et al.* disclose such an oversight component.

Amended independent claim 20 discloses similar features, reciting, *an oversight component that observes the operation of the monitoring component and restarts the component when it fails to operate properly, the oversight component shuts down the licensed application when the monitoring component cannot be restarted.* The cited references do not disclose these aspects, as already noted.

Furthermore, amended independent claim 29 recites, *ensuring that the license data in the data store is being monitored; restarting the monitoring when it is determined that the monitoring has stopped; and shutting down the licensed application when the monitoring cannot be restarted.* These features are not disclosed in Christiano or Rivera, *et al.*, as discussed *supra*.

With further regard to the backup and restore features discussed above, amended independent claim 40 recites, *deleting the stored license data in the license store when it is determined that the license data is corrupt; **checking the validity of the copy of the license data in the backup store**; restoring the license data from the backup store to the license store when it is determined that the copy of the license data in the backup store is valid; and **initiating shutdown of the computer system when it is determined that the copy of the license data in the backup store cannot be validated.*** As already discussed, the cited references do not teach or suggest such techniques for managing corrupted licenses.

In view of at least the foregoing, it is respectfully submitted that Christiano, alone or in combination with Rivera, *et al.* does not teach or suggest each and every feature set forth in amended independent claims 1, 11, 20, 29, and 40 (and all claims depending there from), and as such fails to make obvious the present invention. It is therefore requested that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP494US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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